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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 BARBARA HERTZ,
11 Plaintiff,
12 vs.
13 HARTFORD LIFE AND ACCIDENT
14 INSURANCE COMPANY and GROUP
15 LONG TERM DISABILITY PLAN FOR
16 EMPLOYEES OF INTUIT, INC.,
17 Defendant.

CASE NO. 3:12-cv-00141-LRH-RAM
STIPULATED PROTECTIVE ORDER OF
CONFIDENTIALITY

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THIS STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER is made between and among the parties to the above-captioned action on the date so indicated below.

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WHEREAS, discovery, including but not limited to interrogatories, document requests, requests for admission and depositions (if any applicable although not anticipated in this matter); in the above-captioned action will involve the production of information that the producing parties assert is confidential, personal, sensitive, proprietary, trade secret, commercial, financial and/or business information;

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WHEREAS, the parties agree to the terms herein, and stipulate to the entry of an Order concerning confidential and otherwise sensitive business or proprietary information, and to facilitate the preservation of such confidential material, the parties agree to adhere to the terms herein. The parties expect that this Stipulated

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1 Confidentiality And Protective Order ("Order"), will become an order of the Court, but the
2 parties agree to adhere to the terms herein regardless of whether the Order becomes an
3 order of the Court.

4 WHEREAS, The Parties agree that once documents are labeled as Confidential,
5 the documents are proprietary information and if released Defendant Hartford Life and
6 Accident Insurance Company would be damaged competitively in the marketplace.

7 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED as
8 follows:

9 1. Scope.

10 This Order includes in its scope any documents, electronically stored information,
11 or other information produced, or disclosed in the above-captioned litigation ("Action"),
12 whether pursuant to formal or informal discovery requests, correspondence, motions not
13 filed with the court, by subpoena, or through testimony; including all documents and
14 tangible things as defined in the Federal Rules of Civil Procedure, or any applicable local
15 rules; and to all such information produced or disclosed by non-parties to this Action
16 pursuant to subpoena and/or deposition notice ("Litigation Material"). "Action" shall also
17 include any litigation, action, proceeding or supplemental proceeding in any jurisdiction
18 brought to enforce any judgment entered in this Action or any settlement agreement
19 among or between any of the parties hereto.

20 2. Use of Litigation Material

21 All Litigation Material, disclosed or obtained by or from any person, whether or not
22 a party, in response to any discovery method authorized or permitted by the Federal
23 Rules of Civil Procedure or disclosed through the sealed filing of papers with the Court,
24 shall be used for no purpose other than the prosecution and/or defense of this Action
25 absent further Order of the Court. Nothing in this Order shall be construed to limit,
26 condition or otherwise restrict in any way each Party's use of its own Confidential
27 Information. Such disclosure by the producing Party shall not waive the protections of
28 this Order and shall not entitle other parties, non-parties or their attorneys to use or

1 disclose such information in violation of the Order.

2 **3. Confidential Information**

3 Each party or a non-party in its sole discretion may designate as "Confidential"
 4 under the terms of this Order any: (i) Litigation Material such party or non-party produces
 5 in this Action; or (ii) Litigation Material produced by any non-party consisting of
 6 information concerning one or more parties ("Confidential Information"). Litigation
 7 Material may be designated as "Confidential" before or after it has been produced or
 8 disclosed.

9 **4. Designation of Litigation Material as Confidential**

10 a. Litigation Materials containing Confidential Information shall be so
 11 designated by marking the respective pages of the document and where appropriate, the
 12 entire document, with the legend "CONFIDENTIAL". In the event a party produces
 13 Litigation Material that it deems to be Confidential Information without designating it as
 14 such, the producing party may, by written notice delivered to the receiving party,
 15 designate the information Confidential and upon receipt of such notice, every receiving
 16 party shall mark the Litigation Material "CONFIDENTIAL" and shall treat it thereafter as
 17 Confidential and subject to this Order.

18 b. Documents made available for inspection in response to a request for
 19 production need not be marked "CONFIDENTIAL" prior to inspection. However, the
 20 producing party following an inspection can mark those documents designated for
 21 copying that contain Confidential Information as "CONFIDENTIAL".

22 c. Although depositions are not anticipated in this action, in the event of any
 23 depositions, all portions of deposition transcripts shall be treated as Confidential
 24 Information if designated as such on the record by counsel for any party hereto, or by
 25 counsel for any non-party testifying pursuant to subpoena.

26 d. The Confidential Information designation shall apply to any copies or other
 27 reproductions, excerpts, summaries, abstracts or other documents that paraphrase,
 28 excerpt, or contain Confidential Information. Any such material shall also be clearly

1 designated as containing Confidential Information and shall be subject to all other
 2 applicable protections and provisions of this Order.

3 **5. Contesting Confidential Designation**

4 Any Party who contests the designation of any Litigation Material as Confidential
 5 shall provide written notice to opposing counsel of their objection within thirty (30) days of
 6 receipt or notice of designation of the Litigation Materials as Confidential, and the parties
 7 shall use their best efforts to resolve any objection informally. If the parties are unable to
 8 resolve their dispute, the Party who contests the designation of materials as Confidential
 9 can file an objection with the Court within (45) days of receipt or notice of designation of
 10 the Litigation Materials as Confidential if written notice was provided within 30 days, and
 11 the matter shall be briefed according to local rules. In any challenge to the designation of
 12 the materials as Confidential, the burden of proof shall be on the Party seeking protection.

13 Designation of materials as Confidential shall not operate as an admission by any
 14 party receiving the materials that the information is or is not: (a) confidential; (b)
 15 privileged; (c) relevant; or (d) admissible in evidence at trial.

16 **6. Access to Confidential Information**

17 Counsel for Plaintiff shall be governed by the following restrictions in its use of the
 18 Confidential Information produced to it and as to the information derived therefrom:

19 a. Such Confidential Information may not be disclosed except as is necessary
 20 for the purpose of, and solely in connection with, litigating this case. For that purpose
 21 only, Counsel for Plaintiff may disclose such information to the Court and its employees.
 22 Although it is not anticipated that depositions will be taken in this action, or that
 23 independent expert witnesses will be retained, in the event of such an occurrence, court
 24 reporters, independent expert witnesses or potential expert witnesses retained by
 25 Counsel for Plaintiff, and such other persons as may be agreed upon by the parties in the
 26 future, said agreement to be in writing signed by Counsel for all parties.

27 b. Before disclosure of Confidential Information to any person as permitted by
 28 the preceding paragraph (other than the Court and its employees), such person shall read

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1 a copy of this Stipulation and sign an Agreement To Respect Confidential Information
 2 attached hereto as Appendix "A" (the "Agreement"). Counsel for Plaintiff shall maintain a
 3 copy of all Agreements signed by such persons and shall furnish copies to Counsel for
 4 Hartford Life and Accident Insurance Company upon its request. No Confidential
 5 Information shall be disclosed to any person who refuses or has failed to sign the
 6 Agreement. In the event any person who has signed an Agreement refuses to comply
 7 therewith or fails to adhere to the terms thereof, Counsel for Plaintiff shall make no further
 8 disclosure to such person and shall immediately notify Counsel for Hartford Life and
 9 Accident Insurance Company in writing.

10 c. Confidential Information includes copies and summaries. Digests or
 11 abstracts may be made, but all such copies, digests, abstracts and summaries shall be
 12 considered Confidential and shall be subject to the provisions of this Stipulation.

13 7. References in Open Court

14 Prior to filing any motion wherein Confidential Information is referenced or
 15 attached, Plaintiffs shall comply with LR 10-5(b) and *Kamakana v. City and County of*
 16 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006), or provide Counsel for Defendants reasonable
 17 time, but in any event not fewer than 10 judicial days, to file a motion pursuant to LR 10-
 18 5(b) and *Kamakana* to show particularized good cause or particularized compelling
 19 reasons to file those documents under seal.

20 LR 10-5(b) provides:

21 Unless otherwise permitted by statute, rule or prior Court
 22 order, papers filed with the Court under seal shall be
 23 accompanied by a motion for leave to file those documents
 24 under seal, and shall be filed in accordance with the Court's
 25 electronic filing procedures. If papers are filed under seal
 26 pursuant to prior Court order, the papers shall bear the
 27 following notation on the first page, directly under the case
 28 number: "FILED UNDER SEAL PURSUANT TO COURT
 ORDER DATED _____. All papers filed under seal will
 remain sealed until such time as the Court may deny the
 motion to seal or enter an order to unseal them, or the
 documents are unsealed pursuant to Local Rule.

29 Pursuant to *Kamakana* and LR 10-5(b), any Confidential Information attached to a

1 non-dispositive motion must be accompanied by a motion showing a particularized good
 2 cause for leave to file those documents under seal. And, any Confidential Information
 3 attached to a dispositive motion must be accompanied by a motion showing a
 4 particularized compelling reason for leave to file those documents under seal.

5 **8. Notice of Unauthorized Disclosure**

6 If Confidential Information is disclosed to or comes into the possession of any
 7 person other than in the manner authorized by this Order, the Party who improperly
 8 disclosed the information must immediately inform the producing party of all pertinent
 9 facts relating to such disclosure and shall make every effort to retrieve the improperly
 10 disclosed information and prevent disclosure by each unauthorized person who received
 11 such information.

12 **9. Response to Third-Party Discovery**

13 In the event that any court requires the disclosure of Confidential Information, the
 14 party from whom disclosure is sought shall give immediate written notice to the parties
 15 that produced or designated the Litigation Material as Confidential to enable said party to
 16 take protective actions as it may deem necessary. In the event a party believes that
 17 disclosure is otherwise required by law, it shall give at least 30 days written notice to the
 18 parties that produced or designated the Litigation Material as Confidential prior to
 19 disclosure.

20 **10. Return of Confidential Information**

21 Within 30 days of the conclusion of this Action, the parties agree to return all
 22 Confidential Information (including electronically produced materials) and copies thereof
 23 to the producing party, or certify in writing that they have destroyed all Confidential
 24 Information (including electronically produced materials) and all copies thereof. The
 25 provisions of this Order restricting communication, treatment and use of Confidential
 26 Information, shall continue to be binding after the termination of this Action.

27 **12. Legal Action and Remedies**

28 Counsel for Plaintiff acknowledges it may be subject to sanctions for breach of this

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1 Confidentiality Agreement and agrees to reimburse Hartford for all reasonable attorneys'
 2 fees and costs incurred as a result of a successful action initiated by Hartford seeking
 3 sanctions for breach of this Confidentiality Stipulation. Counsel for Plaintiff also agrees to
 4 reimburse Hartford Life and Accident Insurance Company for all reasonable attorneys'
 5 fees and costs incurred as a result of any successful action initiated by Hartford Life and
 6 Accident Insurance Company to enforce this Confidentiality Stipulation. Nothing in this
 7 Confidentiality Stipulation limits Hartford Life and Accident Insurance Company's right to
 8 pursue other legal or equitable remedies available to it resulting from a breach of this
 9 Confidentiality Stipulation.

10 **13. Purpose of Stipulation and Order**

11 This Order is entered for the purposes of providing appropriate confidentiality
 12 protections and facilitating the production of documents and information without involving
 13 the Court unnecessarily in the process. Nothing in this Order nor the production of any
 14 information or document under the terms of the Order nor any proceedings pursuant to
 15 this Order shall be deemed: (a) to have the effect of an admission or waiver by either
 16 party; or (b) to alter the confidentiality or non-confidentiality of any document or
 17 information; or (c) to alter any existing obligation of any party or the absence thereof.

18 **14. Court Retains Jurisdiction**

19 After the conclusion of this litigation, the provisions of this Order shall continue to
 20 be binding and this Court shall retain jurisdiction over all persons who have access to
 21 confidential information produced pursuant to this Order for the purpose of enforcement
 22 of this Order, including any appropriate sanctions for violations.

23 **15. Non-termination of Order**

24 This Order shall remain in effect for the duration of the Litigation unless terminated
 25 by stipulation executed by Counsel of record for the parties or by order of the Court. The
 26 provisions of this Order, insofar as they restrict the communication, treatment and use of
 27 Confidential Information, shall continue to be binding after the termination of this action
 28 unless the Court orders otherwise.

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2 16. Modification Permitted

3 Nothing in this Order shall prevent any Party from seeking modification of this
4 Order.

5 17. Non-waiver

6 Nothing in this Order shall prevent any Party from objecting to discovery that the
7 Party believes to be otherwise improper.

8 18. Counterparts

9 This Order may be executed in counterparts, each of which shall constitute one
10 and the same agreement.

11 STIPULATED AND AGREED BY:

12 LEWIS BRISBOIS BISGAARD & LEVERTY & ASSOCIATES LAW CHTD.
13 SMITH LLP

14 By: Keith A. Weaver

By: Patrick R. Leverty

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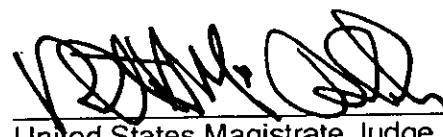
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ORDER

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IT IS SO ORDERED.



United States Magistrate Judge

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Dated: 11-30-12

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1 **APPENDIX "A"**
23 **AGREEMENT TO RESPECT CONFIDENTIAL INFORMATION**4 I have read and understand the Confidentiality Stipulation in the case of BARBARA
5 HERTZ v. HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY and GROUP
6 LONG TERM DISABILITY PLAN FOR EMPLOYEES OF INTUIT, INC., in the District of
7 Nevada, a copy of which Stipulation has been delivered to me to keep with my copy of
8 this Agreement. I agree to be bound by all the terms of the Confidentiality Stipulation and
9 hereby agree not to use or disclose the Confidential Information to be disclosed to me
10 except for purposes of this litigation as set forth in the Confidentiality Stipulation. I further
11 agree and attest to my understanding that breach of this Agreement is directly actionable
12 by the party which designated the Confidential Information which is disclosed, and that in
the event I fail to abide by the terms of the Stipulation, I may be subject to sanctions.

13 _____

14 Signature

15 _____

16 Name (Printed)

17 _____

18 Street Address

19 _____

20 City State Zip

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22 Occupation or Business

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